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Attorneys for Defendant  
WAL-MART STORES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In Re WAL-MART STORES, INC.  
WAGE AND HOUR LITIGATION,

This document relates to Case Nos.:  
C 06-02069 SBA (Smith) and  
C 06-05411 SBA (Ballard)

Case No. C 06-02069 SBA (BZ)

**REQUEST FOR JUDICIAL NOTICE;**

**DECLARATION OF REBECCA EISEN  
IN SUPPORT OF REQUEST FOR  
JUDICIAL NOTICE**

Date: April 22, 2008

Time: 1:00 p.m.

Place: Courtroom 3

Judge: Hon. Sandra Brown Armstrong

**REQUEST FOR JUDICIAL NOTICE**

Pursuant to Federal Rule of Evidence 201, Defendant Wal-Mart Stores, Inc. (Wal-Mart)  
respectfully requests that the Court take judicial notice of the publicly available documents  
identified below and attached hereto.

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1 **I. ARGUMENT**

2 Federal Rule of Evidence 201 (“Rule 201”) allows a court to take judicial notice of facts  
3 that are “not subject to reasonable dispute in that [they are] either (1) generally known within the  
4 territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by  
5 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

6 Records of proceedings in this Court are proper subjects of judicial notice. *See E. & J.*  
7 *Gallo Winery v. Encana Energy Servs., Inc.*, 2005 WL 2435900, at \*6 (E.D. Cal. Sept. 30, 2005)  
8 (“A district court may take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence .  
9 . . of orders or decisions or proceedings of any federal or state court.”) (internal citation omitted);  
10 *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir.1988) (judicial notice taken of  
11 complaints in related actions).

12 Documents within the public record, such as the California Department of Labor  
13 Standards and Enforcement (the “DLSE”) Policies and Interpretations Manual and DLSE Opinion  
14 Letters, are the proper subject of judicial notice. *See Bell v. Farmers Ins. Exch.*, 87 Cal.App.4th  
15 805, 815 (“While not controlling upon the courts . . . [DLSE documents] do constitute a body of  
16 experience and informed judgment to which courts and litigants may properly resort for  
17 guidance.”) (internal citations omitted); *see also Cicairos v. Summit Logistics, Inc.*, 133 Cal. App.  
18 4th 949, 956 n.1 (2005) (taking judicial notice of DLSE Enforcement Policies and Interpretations  
19 Manual); *Savaglio v. Wal-Mart Stores, Inc.*, 2004 WL 2034092, at \*5 (Cal. Super. Ct. Jul. 20,  
20 2004) (taking judicial notice of DLSE Enforcement Policies and Interpretations Manual, DLSE  
21 opinion letter, and Labor Commissioner Order).

22 It is proper for the Court to take judicial notice of the contents of the following  
23 documents, all of which are authenticated in the attached Declaration of Rebecca Eisen in Support  
24 of Request for Judicial Notice below and attached as exhibits hereto.

25 Exhibit A is a true and correct copy of the Class Action Complaint filed by Danton  
26 Ballard and Nathan Lyons (Court Docket #10-3).

27 Exhibit B is a true and correct copy of the [Proposed] Consolidated Class Action  
28 Complaint in this action filed on November 29, 2006 and entered on November 30, 2006 (no

1 docket number available).

2 Exhibit C is a true and correct copy of the First Amended Consolidated Complaint in this  
3 action (Court Docket #79).

4 Exhibit D is a true and correct copy of the Order in this action filed May 29, 2007 (Court  
5 Docket #86).

6 Exhibit E is a true and correct copy of the Stipulation and Order Dismissing Third Claim  
7 for Relief and Striking Related Allegations in this action (Court Docket #106).

8 Exhibit F is a true and correct copy of Plaintiffs' Notice of Motion and Motion for Class  
9 Certification in this action (declarations and exhibits omitted) (Court Docket #149).

10 Exhibit G is a true and correct copy of the Declaration of Martin M. Shapiro, Ph.D., In  
11 Support of Plaintiffs' Motion for Class Certification in this action (exhibit omitted) (Court Docket  
12 #149-10).

13 Exhibit H is a true and correct copy of Defendant Wal-Mart Stores, Inc.'s Opposition to  
14 Plaintiffs' Class Certification Motion in this action (declarations and exhibits omitted) (Court  
15 Docket #163).

16 Exhibit I is a true and correct copy of the Declaration of Denise Neumann Martin in  
17 Support of (1) Defendant's Opposition to Motion for Class Certification and (2) Objections to  
18 Evidence to the Declaration of Martin M. Shapiro in this action (exhibits omitted) (Court Docket  
19 #169).

20 Exhibit J is a true and correct copy of the Declaration of Diana McChristian in Support of  
21 Defendant's Opposition to Motion for Class Certification in this action (Court Docket #170).

22 Exhibit K is a true and correct copy of the Declaration of Juliette Nam in Support of  
23 Defendant's Opposition to Motion for Class Certification in this action (Court Docket #171).

24 Exhibit L is a true and correct copy of the Declaration of Roxanna Wigger in Support of  
25 Defendant's Opposition to Motion for Class Certification in this action (including selected  
26 exhibits) (Court Docket #213, 213-2, 213-3).

27 Exhibit M is a true and correct copy of the Declaration of Michael Annatone in Support of  
28 Defendant's Opposition to Motion for Class Certification in this action (including all exhibits)

(Court Docket #214-2).

Exhibit N is a true and correct copy of Plaintiffs' Reply Memorandum of Points & Authorities in Support of Plaintiffs' Motion for Class Certification in this action (declarations and exhibits omitted) (Court Docket #217).

Exhibit O is a true and correct copy of the Supplemental Declaration of Martin M. Shapiro, Ph.D., in Support of Plaintiffs' Motion for Class Certification in this action (Court Docket #217-7).

Exhibit P is a true and correct copy of the Supplemental Declaration of Denise Neumann Martin in Support of Surreply in Opposition to Motion for Class Certification in this action (Court Docket #224-3).

Exhibit Q is a true and correct copy of the Order in this action filed February 13, 2008 (Court Docket #250).

Exhibit R is a true and correct copy of an opinion letter issued by the DLSE on September 15, 1986, as obtained from the DLSE website at <http://www.dir.ca.gov/dlse/opinions/1986-09-15.pdf>.

Exhibit S is a true and correct copy of excerpts from the 2002 DLSE Enforcement Policies and Interpretations Manual. This document was printed from the DLSE website and is available at [http://www.dir.ca.gov/dlse/DLSEManual/dlse\\_enfcmanual.pdf](http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf).

DATED: March 13, 2008

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Rebecca Eisen  
Rebecca Eisen

Attorneys for Defendant  
WAL-MART STORES, INC.

DECLARATION OF REBECCA EISEN IN SUPPORT OF  
REQUEST FOR JUDICIAL NOTICE

I, Rebecca Eisen, declare:

1. I am an attorney at law admitted to the State Bar of California and admitted and duly licensed to practice before this Court. I am a partner of Morgan, Lewis & Bockius LLP and am one of the attorneys for Defendant Wal-Mart Stores, Inc. in this action. The facts set forth below are true of my personal knowledge and, if called upon, I could and would testify competently to these facts.

2. Exhibit A is a true and correct copy of the Class Action Complaint filed by Danton Ballard and Nathan Lyons (Court Docket #10-3).

3. Exhibit B is a true and correct copy of the [Proposed] Consolidated Class Action Complaint in this action filed on November 29, 2006 and entered on November 30, 2006 (no docket number available).

4. Exhibit C is a true and correct copy of the First Amended Consolidated Complaint in this action (Court Docket #79).

5. Exhibit D is a true and correct copy of the Order in this action filed May 29, 2007 (Court Docket #86).

6. Exhibit E is a true and correct copy of the Stipulation and Order Dismissing Third Claim for Relief and Striking Related Allegations in this action (Court Docket #106).

7. Exhibit F is a true and correct copy of Plaintiffs' Notice of Motion and Motion for Class Certification in this action (declarations and exhibits omitted) (Court Docket #149).

8. Exhibit G is a true and correct copy of the Declaration of Martin M. Shapiro, Ph.D., In Support of Plaintiffs' Motion for Class Certification in this action (exhibit omitted) (Court Docket #149-10).

9. Exhibit H is a true and correct copy of Defendant Wal-Mart Stores, Inc.'s Opposition to Plaintiffs' Class Certification Motion in this action (declarations and exhibits omitted) (Court Docket #163).

1           10.     Exhibit I is a true and correct copy of the Declaration of Denise Neumann Martin  
2 in Support of (1) Defendant's Opposition to Motion for Class Certification and (2) Objections to  
3 Evidence to the Declaration of Martin M. Shapiro in this action (exhibits omitted) (Court Docket  
4 #169).

5           11.     Exhibit J is a true and correct copy of the Declaration of Diana McChristian in  
6 Support of Defendant's Opposition to Motion for Class Certification in this action (Court Docket  
7 #170).

8           12.     Exhibit K is a true and correct copy of the Declaration of Juliette Nam in Support  
9 of Defendant's Opposition to Motion for Class Certification in this action (Court Docket #171).

10          13.     Exhibit L is a true and correct copy of the Declaration of Roxanna Wigger in  
11 Support of Defendant's Opposition to Motion for Class Certification in this action (including  
12 selected exhibits) (Court Docket #213, 213-2, 213-3).

13          14.     Exhibit M is a true and correct copy of the Declaration of Michael Annatone in  
14 Support of Defendant's Opposition to Motion for Class Certification in this action (including  
15 selected exhibits) (Court Docket #214-2).

16          15.     Exhibit N is a true and correct copy of Plaintiffs' Reply Memorandum of Points &  
17 Authorities in Support of Plaintiffs' Motion for Class Certification in this action (declarations and  
18 exhibits omitted) (Court Docket #217).

19          16.     Exhibit O is a true and correct copy of the Supplemental Declaration of Martin M.  
20 Shapiro, Ph.D., in Support of Plaintiffs' Motion for Class Certification in this action (Court  
21 Docket #217-7).

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23 Neumann Martin in Support of Surreply in Opposition to Motion for Class Certification in this  
24 action (Court Docket #224-3).

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 13th day of March 2008 at San Francisco, California.

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Rebecca Eisen